

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KERRY O'BRYAN,

Petitioner,

v.

J A TERRIS,

Respondent.

CASE NO. 2:14-cv-10889

HONORABLE PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

ORDER DENYING PETITIONER PERMISSION TO PROCEED ON APPEAL IN FORMA
PAUPERIS

This is a habeas case under 28 U.S.C. § 2241. On March 14, 2014, the Court issued an Opinion and Order summarily denying the petition because Petitioner had not demonstrated that his remedy under 28 U.S.C. § 2255 was inadequate or ineffective. Petitioner has filed a motion to proceed on appeal in forma pauperis.

The standard for granting an application for leave to proceed in forma pauperis asks whether the appeal is being taken in good faith. *See Foster v. Ludwick*, 208 F. Supp. 2d 750, 764 (E.D. Mich. 2002) ; 28 U.S.C. § 1915(a)(3); FED. R. APP. 24(a). "Good faith" requires a showing that the issues raised are not frivolous; it does not require a showing of probable success on the merits. *Foster*, 208 F. Supp. 2d at 765. The Court finds that the issue raised by Petitioner is frivolous. As explained in the opinion of summary dismissal, Petitioner's remedy is to file a petition for writ of habeas corpus under §2255 in the District of his conviction. Any argument to the contrary flies in the face of settled law. Therefore, an appeal could not be taken in good faith and Petitioner may not proceed in forma pauperis on appeal. *Id.*

Accordingly, Petitioner's motion to proceed in forma pauperis on appeal is DENIED.

s/Paul D. Borman

PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

Dated: May 13, 2014

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on May 13, 2014.

s/Deborah Tofil

Case Manager